HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.3695 of 2001

Date of decision : 22.11.2006.

Himmat Singh **.....Petitioner**
versus
Mukhtiar Singh **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Arun Jain, Advocate for the petitioner.
Mr.C.B.Goel, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the ejectment order dated 1.10.1999, passed by the learned Rent Controller under Section 13 (2) (iii) of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act), and the order dated 22.5.2001, passed by the learned Appellate Authority, affirming the order of eviction passed by the learned Rent Controller.

It is the case of the Landlord/respondent that Bir Singh, father of the present petitioner was inducted as tenant in the demised premises @ Rs.300/- per month vide rent note dated 15.1.1980 w.e.f. 1.2.1980. The rent note was for a period of 11 months and it was agreed by the tenant that he will not make any addition or alteration and will not cause any damage to the premises in dispute.

The respondent has sought eviction of the petitioner inter-alia on the ground that tenant has made material additions and alterations in the demised premises without the consent of the landlord as he has raised the level of the floor of the premises in dispute to the extent of 1 feet and 7-1/2

inches, which has decreased the height of the roof from the floor and that the tenant has reduced the height of iron shutter and affixed the iron rods in the walls and therefore, impaired the value and utility of the demised premises.

It was the stand of the tenant that the level of the Malerkotla road was raised by PWD Department about 4-5 years ago and on account of raising of the road level, the level of the shop became lower and that the rainy water started accumulating in the demised premises. It was pleaded that the landlord himself, under his inspection, raised the level of the floor of the demised premises and has been receiving the rent and house tax from the petitioner. It was denied that the material additions and alterations have been made without the consent of the landlord. The reduction of the height of the shutter was also denied.

In evidence, the respondent-landlord has produced the rent note, Exhibit A-1 and also examined AW-5 Rashmi Manrao, Advocate, who was appointed as Local Commissioner and AW-6 Sh.J.K.Gupta, Building Expert who had inspected the demised premises on 19.11.1998. The said expert has proved his report Exhibit AW-6/1, site plan Exhibit AW-6/2 and photographs AW-6/3 to AW-6/9. On the other hand, the tenant-petitioner has examined one Sharm Singh, Masson, as RW-1, who deposed regarding making of floor of the shop and Vishal Kumar as RW-2, who deposed that the floor of the shop was raised with the consent of the landlord. Apart from this, the tenant-petitioner appeared himself as RW-3 and asserted the stand taken by him in the written statement.

The learned Rent Controller found that there is no document to show any written consent of the landlord for raising the level of the floor of

the shop in dispute. Still further the tenant has agreed in the rent note, Exhibit A-1 not to make any alteration and that the oral evidence led by the tenant is of no consequence. Since it was found that level of the floor of the shop has been raised, so the value and utility of the property was found to be impaired and consequently, the learned Rent Controller has passed the order of ejectment.

In appeal, the learned Appellate Authority has referred to Section 13 (2) (iii) of the Act to infer that written consent in terms of the aforesaid provisions of the Act, has not been proved. The learned Appellate Authority has relied upon rent note Exhibit A-1, which debars the tenant to make alteration or addition in the demised shop. Consequently, with such findings, the order of eviction, passed by the learned Rent Controller, was affirmed.

At this stage, it will be beneficial to reproduce the relevant provisions of the Act.

> "13. **Eviction of tenants:- (1)** A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, (or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.).
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> (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied:-
>
> (i) xx xx xx

xx xx xx

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or

A perusal of the above provisions of the Act would show that the consent of the landlord is not a condition precedent if the ground of eviction is under Clause (iii) of Section 13 (2) of the Act. As a matter of fact, the requirement of written consent is necessary if eviction is sought under Clause (ii) of Section 13 (2) of the Act i.e. eviction on the basis of sub-letting or of change of a user. Therefore, lack of written consent of the landlord in raising the level of the floor of the building, by itself is not a ground to seek eviction of the tenant.

The fact that the tenant has increased the level of the floor of the demised shop, is not in dispute. Though he has pleaded that such level of the floor was increased with the consent of the landlord, but even if there was no written consent of the landlord, still I am of the opinion that increase in the level of floor of the building is not an act which impairs the value and utility of the building. It has come on record that level of the Malerkotla

road, over which the demised premises are situated, has been increased. With the increase in the level of the road, the rainy water accumulates in the premises in dispute. Therefore, to make best use of the premises, free from natural vagaries, the increase of the level of the floor of the demised shop was imperative. Such increase of the level is for proper utilization of the building. In fact, the building would be impaired, if the floor level is not increased as lower level of the shop would lead to accumulation of water in the tenanted premises and consequently damage the building beyond repair. In fact, the learned Appellate Authority has wrongly excluded judgment reported as ***1992 (2) R.C.R.-380 P&H, Gurmit Singh versus Smt.Kirpal Kaur,*** where the level of the floor was lowered. It was held that lowering of floor does not impair the value and utility of building. In the present case, the level of the floor has been increased. Such change in the level of the floor can be undone at the nominal costs as well. Therefore, change in the level of the floor in the present case is not sufficient to return a finding that tenant is liable to be evicted for impairing the value and utility of the building.

The other reasoning given by the Courts below that in terms of the Clause in the rent deed as well, the tenant is liable to be evicted. The clause in the rent note, Exhibit A-1 that the tenant cannot make any addition or alteration in the demised shop is ineffective after the expiry of lease period. The tenant can be evicted only in terms of provisions of the Act and not on the basis of violation of the terms of the lease in respect of the premises situated in the area regulated by the Act.

Therefore, the orders passed by the Courts below evicting the petitioner from the demised shop, are not sustainable. Consequently, the

present revision petition is allowed. The orders passed by the Courts below are set-aside and the eviction petition filed by the respondent is dismissed.

(HEMANT GUPTA)
JUDGE

November 22, 2006
**mohinder*